

BEFORE THE IDAHO BOARD OF TAX APPEALS

IN THE MATTER OF THE APPEAL OF DAVID)	APPEAL NO. 13-A-1098
AND MONIQUE BUTLER from a decision of the)	
Ada County Board of Equalization for tax year)	FINAL DECISION
2013.)	AND ORDER

HOMEOWNER'S EXEMPTION APPEAL

THIS MATTER came on for hearing October 2, 2013 in Boise, Idaho before Board Member Leland Heinrich. Board Members David Kinghorn, Linda Pike and Leland Heinrich participated in this decision. Attorney Joshua Taylor and Appellant David Butler appeared at hearing. Chief Deputy Assessor Tim Tallman and Deputy Assessor Erica Taggart appeared for Respondent Ada County. This appeal is taken from a decision of the Ada County Board of Equalization (BOE) denying Appellants' Homeowner's exemption claim for property described by Parcel No. R5330200240.

The issue on appeal is whether the subject property qualifies for an exemption pursuant to Idaho Code § 63-602G; commonly referred to as the Homeowner's Exemption.

The decision of the Ada County Board of Equalization is reversed.

FINDINGS OF FACT

The assessed land value is \$113,800 and the improvements' valuation is \$127,100, totaling \$240,900. Appellants did not contest subject's assessed value, but rather contended subject should be granted the Homeowner's Exemption for 2013.

Subject is located in Eagle, Idaho, and was purchased by Appellants in 2003. Until 2013, subject received the Homeowner's Exemption during Appellants' ownership. In April 2012, Appellant Husband accepted a job offer from a California technology firm. Initially, Husband moved to California, leaving Appellant Wife and children in Idaho. Husband would commute back to Idaho on weekends, holidays, and other such opportunities. This continued until July

2012, when the entire family joined Husband in a California rental property. Husband's employer offered to pay relocation expenses and even offered an incentive to sell the subject property and move the family permanently to California. Appellants declined and instead only moved some of their household goods to California, with the bulk of Appellants' personal property remaining at the subject property.

Appellants acknowledged a significant amount of time was spent in California during 2012 and 2013, but maintained Idaho was their permanent home and primary dwelling place. Appellants explained all holidays were spent in Idaho at the subject property. Approximately three (3) months during the summer of 2013 was spent at subject. It was also noted Appellants have extensive family connections to Idaho. Appellants cars are registered in Idaho, they have Idaho driver's licenses, and both are registered to vote in Idaho. Appellants utilize Idaho doctors and dentists, automobile mechanics, veterinarian services, and other local goods and services. Appellants regard Idaho as their "home", and the California residence as simply a temporary living place. Appellant Husband anticipates returning permanently to Idaho in 2014 or 2015, though the family may relocate back to Idaho sooner.

Respondent noted there was no dispute regarding permanent residency, nor occupancy of the subject property during 2012, but rather the question was whether subject qualifies as Appellants' primary residence for 2013. Respondent focused on the limited amount of time Appellants occupied subject. In Respondent's view, not enough time was spent at the subject property to qualify for the exemption. Respondent also noted Appellants filed a part-year & nonresident Idaho income tax return for 2012, as well as one (1) for California. Respondent explained if Appellants were domiciled in Idaho during 2012, then a resident return should have

been filed. Appellants stated they mistakenly filed the Idaho part-year return because they were unsure which form applied to their situation. Because they spent time in both states, Appellants reasoned that part-year returns were needed for both.

CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of fair market value, or as applicable exempt status. This Board, giving full opportunity for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their respective positions, hereby enters the following.

Qualification requirements for the Homeowner's Exemption are found in Idaho Code § 63-602G, which provides in pertinent part,

(1) During the tax year 2006 and each year thereafter, subject to annual adjustment as provided herein, the first seventy-five thousand dollars (\$75,000) of the market value for assessment purposes of the homestead as that term is defined in section 63-701(2), Idaho Code . . . shall be exempt from property taxation. . .

(2) The exemption allowed by this section may be granted only if:

(a) The homestead is owner-occupied and used as the primary dwelling place of the owner as of January 1 . . .

(f) For the purpose of this section, the definition of "primary dwelling place" shall be the same as definition set forth in section 63-701(8), Idaho Code.

(g) For the purpose of this section, the definition of "occupied" shall be the same definition set forth in section 63-701(6), Idaho Code.

There are several key terms in the above statute, each of which are defined in Idaho Code § 63-701: homestead, primary dwelling place, and occupied. Idaho Code § 63-701 reads in relevant part,

(2) "Homestead" means the dwelling, owner-occupied by the claimant as described in this chapter and used as the primary

dwelling place of the claimant and may be occupied by any members of the household as their home, and so much of the land surrounding it, not exceeding one (1) acre, as is reasonably necessary for the use of the dwelling as a home

...

(6) "Occupied" means actual use and possession.

(8)(a) "Primary dwelling place" means the claimant's dwelling place on January 1 or before April 15 of the year for which the claim is made. The primary dwelling place is the single place where a claimant has his true, fixed and permanent home and principal establishment, and to which whenever the individual is absent he has the intention of returning. A claimant must establish the dwelling to which the claim relates to be his primary dwelling place by clear and convincing evidence or by establishing that the dwelling is where the claimant resided on January 1 or before April 15 and:

- (i) At least six (6) months during the prior year; or
- (ii) The majority of the time the claimant owned the dwelling if owned by the claimant less than one (1) year; or
- (iii) The majority of the time after the claimant first occupied the dwelling if occupied by the claimant for less than one (1) year. The county assessor may require written or other proof of the foregoing in such form as the county assessor may determine.

The first issue is whether subject is a homestead as contemplated by the statute. The subject property includes a residence and some additional acreage. The property is owned by Appellants and is used and occupied by Appellants when not in California. Subject is a homestead under this code section.

Next is whether Appellants "occupied" the subject homestead as required. The term is simply defined as "actual use and possession". The evidence revealed Appellants actually used and occupied subject during 2013 and for more than half of 2012. Occupation during 2013 was not regular or continuous, but did occur during the summer months, as well as, other holiday or extended days off work. The statute does not indicate how much of the year a homestead must

be used and occupied by a claimant.

The key term in this analysis is “primary dwelling place”, which is defined as “the single place where a claimant has his true, fixed and permanent home and principal establishment, and to which whenever the individual is absent he has the intention of returning.” Idaho Code § 63-701(8)(a). The definition is strikingly similar to that of domicile, which according to Black’s Law Dictionary, Seventh Edition (1999), is “the place at which a person is physically present and that the person regards as home; a person’s true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere.” Many court decisions have defined domicile similarly. The Board is unaware of any court opinions related to the definition of primary dwelling place as used in the context of the Homeowner’s Exemption. However, the term as defined by the legislature, very nearly approximates that of domicile. As such, it is reasonable to use a similar approach for analyzing one’s primary dwelling place as that which is used in determining domicile.

It is important to note residence is not the same as domicile. “Residence means living in a particular locality, but domicile means living in that locality with intent to make it a fixed and permanent home.” *In re Newcomb*, 192 N.Y. 238, 249; 84 N.E. 950, 954 (1908). A person can have multiple residences, but only one (1) domicile. “For a change of domicile to occur, the fact of physical presence at a dwelling place and the intention to make it a home must concur. And when such domicile is established, *it persists until another is legally acquired.*” *Kirkpatrick v. Transtector Systems*, 114 Idaho 559, 562; 759 P.2d 65, 68 (1988). (Emphasis added). Appellants have owned subject since 2003, and according to Appellants, it is the only place they have considered “home” since that time. Appellants maintained there has never been an intent

to abandon subject and begin a new “home”.

Respondent contended Appellants had changed their primary dwelling place to California, primarily because most of their time during the year is spent there. The courts have routinely held, however, that “mere change of residence although continued for a long time does not effect a change of domicile, while a change of residence for even a short time with the intention in good faith to change domicile, has that effect . . . There must be a present, definite and honest purpose to give up the old and take up the new place as the domicile of the person whose status is under consideration.” *Newcomb*, supra. In this case, Appellants have not demonstrated an intent to change their domicile. Therefore, their Idaho domicile persists until another is legally acquired.

The evidence supports Appellants’ claim that Idaho is their primary home. To wit, all three (3) of Appellants’ vehicles are registered in Idaho, and Appellants both have Idaho driver’s licenses. Appellants are registered to vote in Idaho and the family’s primary doctor, dentist, and veterinarian are all located in Idaho. Appellants have extensive family and communal ties to Idaho, and a local bank account is also maintained by Appellant Wife. Further, Appellants have not claimed a homestead exemption for another property, nor has subject been rented to any third parties. In short, the Board fails to find that Appellants intended to change their primary dwelling place. Indeed, the evidentiary record supports Appellants’ assertion that the California job is a temporary situation and that once completed, Appellants intend to resume a full-time presence in Idaho.

Despite the fact that the majority of Appellants’ days during 2013 were spent in California, the Board finds the subject property is Appellant’s primary dwelling place for purposes of the

Homeowner's Exemption. As such, the Board will reverse the decision of the Ada County Board of Equalization and grant the Homeowner's Exemption.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Ada County Board of Equalization concerning the subject parcel be, and the same hereby is, REVERSED.

IT IS FURTHER ORDERED that any taxes which have been paid in excess of those determined to have been due be refunded or applied against other *ad valorem* taxes due from Appellants.

DATED this 31st day of December, 2013.